

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN

Monday, August 12, 2013, 6:00 PM

PLEDGE OF ALLEGIANCE - A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Guy Gentry, President; Mike Moesner, Brad Overton, Richard Reid, Jeff Valiant and Jeff Willis.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff.

MEMBERS ABSENT: Amanda Mosiman

MINUTES: Upon a motion made by Richard Reid and seconded by Jeff Valiant, the Minutes of the last regular meeting held July 8, 2013, and the Joint Administrative Meeting held July 8, 2013, were approved as circulated.

The President explained the Rules of Procedure to the audience. He said this Board holds a hearing for the rezoning and makes a recommendation but in this case the Town of Elberfeld will be the body that will either approve or deny the petition.

REZONING PETITION:

PC-R-13-07 Petition of Scott and Catherine Dowers To rezone .20 acres located on the S side of Sycamore St. approximately 0' E of the intersection formed by Sycamore St. and 1st St. Town of Elberfeld, from "R-1A" One Family Dwelling to "R-2" Multiple Family Dwelling. 70 1st St. Elberfeld, IN, North half lots 37 and 44 Original Plat of the Town of Elberfeld. *Advertised in the Standard, August 1, 2013.*

Scott and Catherine Dowers were present.

The President called for a staff report.

The Executive Director said they have submitted all the return receipts from certified mail of notice of this meeting to the adjacent property owners. She added this is a request to rezone .2 acres from "R-1A" One Family Dwelling to "R-2" Multiple Family Dwelling and that the "R-2" zoning requires 6,000 square feet or a minimum of 3,000 square feet per dwelling unit. She said the square footage of this property is 8,316 square feet. Mrs. Rector said the Comprehensive Plan shows the area to be moderate to high density residential and there is currently a single family dwelling and unattached garage on the property. She said the property directly north, south and east are zoned "R-1A" with residences and/or apartments and the property to the west is zoned "R-0" with office. Mrs. Rector said there is no flood plain on this property on it fronts on 1st Street and Sycamore Street. She added there is a driveway for the garage off Sycamore.

She said according to the application they plan to remodel the house into a duplex which would be allowed in "R-2" zoning. Mrs. Rector added this rezoning needs to be approved by Elberfeld Town Board. She said a letter was sent to the Town along with a copy of this petition for their comments and concerns and they have not received any comments from the Town. She further added that Elberfeld's Town Meeting is the third Monday of each month and according to the Rules of Procedure, this will be sent to the Town of Elberfeld for approval at their September 16th meeting at 6:00 p.m unless the Board waives their Rules and sends it to the August 19th meeting. She added staff will send a certified report within ten days of this meeting. Mrs. Rector added they also have a letter of remonstrance from Sharon Crafton, Anne Crafton and Craig Crafton and another from Charles Crafton (Copies on file.) She said the letters were included in their packets.

She said the letters are lengthy and they have copies but she can read them if they want. She said it is basically that they want this to stay a single family residence. She added the application is in order.

Attorney Doll said the letters are part of the packets and she needn't read them.

Scott Dowers said there is a need for additional rental property in Elberfeld and there are very few properties in Elberfeld he would even consider doing this with but this is located directly next door to another multifamily unit already. He said it has been there since he was a kid and he isn't sure if it is even zoned that way. He said other than that he knows one of the other properties diagonal from the house is not owner operated, it has been a rental property for years. He said Mrs. Crafton owns the property that is multifamily and is directly next door to this property. He said that is the only reason he would consider doing this on this property because it is not in the middle of a single family area.

Mrs. Rector said in reading the letter from the Crafton's, she explains she does own the apartment building. She said it is not zoned for apartments but she is sure it is pre-existing.

Guy Gentry asked if this is going to be two family units.

Scott Dowers said the upstairs of the house hasn't been finished for years and what they would like to do is add a second unit upstairs.

Mike Moesner said so they are not really adding on to the house.

Scott Dowers said no they are not adding any square footage; the only thing they would be adding would be a deck on the outside of the house between this house and the other multiunit in order to have access to the upstairs.

Rick Reid asked if that is going to be the only access.

Scott Dowers said it is; they are going to close off the interior stairs so there won't be access between the two units.

Mrs. Rector asked if that is Dr. Like's office across the street.

Mr. Dowers said it is.

Ascertaining there were no further questions from the Board, the President called for remonstrators.

Sharon Crafton said she lives in front of this house. She said her apartment building has been in place...it once was a business with apartments upstairs and it has been there probably 80-100 years. She said there is ample parking there for her tenants. She said she doesn't think there is a parking area for this. She said there is a need for more single dwelling houses in Elberfeld than complexes and apartments. Mrs. Crafton said it needs to stay the small community it was with nice homes. She said this is a nice home and she thinks there will probably be trees removed and she does know it will decrease the value of her home. Mrs. Crafton said there is another home adjacent to this one, it isn't all businesses. She said she would like for her letters to be attached to the Minutes. (Copies on file.) She said she doesn't want this because of the noise and the frequent turnover of tenants, the destroying of the trees and a house like this just doesn't look right with a deck on it. She said it would be upstairs and she isn't sure how he plans to go up the steps on the property but she would like to see it ...Scott does a good job remodeling and she would like to see it done as a single family home and he could make a good profit on it. She said she thinks everything stated in those letters are how she and her children feel. She asked if they will be attached for them to look them over.

Guy Gentry said once they are turned in they become part of the application.

Ascertaining there were no other remonstrators he called Mr. Dowers back for rebuttal.

Mr. Dowers said the house needs a considerable amount of work. He said they do fix up houses in town and they try to fix the houses up like they were going to live in them because they want the community to stay nice. He said as far as parking goes; if that is a concern he is willing to work with the Inspector to come up with a solution. He said there is plenty of property there to put in additional parking if it is deemed necessary. He said he is hoping they don't have a big turn over problem with tenants; he hopes for long term tenants.

Mrs. Rector said four parking spaces will be required for the duplex. She said each unit needs two parking spaces.

Guy Gentry asked if there is a driveway or off road parking now.

Mr. Dowers said the house has always had street side parking. He said other than the garage that is all. He said the yard is fenced in and if it is a necessity they can remove it. He said they wanted to keep the yard fenced because most likely they will have a young family and it will help keep the kids from getting into the street. He said they will do what they need to do.

Mike Moesner asked if the house has a garage.

Mr. Dowers said it is a detached two car garage.

Rick Reid asked what kind of trees he will remove.

Mr. Dowers said there are some maple trees...honest and truly, the only ones he plans on taking down...there is a dead one toward Dr. Like's office and there is some sort of cedar tree that was decorative at one point but has gotten over grown. He said there are a lot of shrubs that are over grown on the property also. He said he doesn't take trees down unless he has to.

Rick Reid said so he does it more for aesthetics.

Scott Dowers said yes. He added to the west he wants to keep the trees for shade. He said there is one tree that has only one green limb on it and it needs to come down to prevent damage. He said everything needs to be cut back because it is rubbing the roof; everything is overgrown and he wants to get it manageable.

Rick Reid asked what square footage will be upstairs; will it be two bedrooms.

Scott Dowers said it will be two bedrooms but he can't remember how many square feet but it will almost be the same as the lower floor. He said the only difference is the laundry room that was an addition a few years ago.

Ascertaining there were no other questions from the Board, the President called for a motion.

Mrs. Crafton asked if she could speak again.

The President called her to the podium.

Mrs. Crafton said she mows on both sides of this property and there are no dead trees there. She said there are large maple trees that have been there for years and that house has been well maintained. She said she has been in it and there are three rooms upstairs – she has been upstairs and downstairs and it is has been well maintained. She said the person who lived there recently could not make her payments and that is why it went to the bank. She said she didn't know if they are going to go look at it but it is a beautiful small house and it has been there for years.

Ascertaining there were no other comments, the President called for a motion.

Mrs. Rector asked if Mr. Dowers is requesting to have this sent to the August 19th Town Board meeting or the September 16th meeting.

Mr. Dowers said if it is possible, he would like for this to be sent to the August 19th meeting due to the fact that how the Board decides will be determine how he addresses the property. He said if this is approved and they will turn it into a rent unit and they want to get the lower unit done as

quickly as possible. He said if not, they will hold off on the property; they have another property to do work on first and then will get around to this one.

Mike Moesner made a motion based on the evidence presented and petition on file to recommend approval the Town of Elberfeld of PC-R-13-07. The motion was seconded by Jeff Willis. Roll call was taken with Guy Gentry, Mike Moesner, Richard Reid and Jeff Willis voting for the motion. Brad Overton voted against the motion and Jeff Valiant abstained.

The Executive Director said the motion carried with four votes.

The President said the recommendation to Elberfeld will be for acceptance; however, they have the final say and can take this recommendation or not. He asked if he is requesting a waiver of the Rules of Procedure to send this to the August meeting.

Mr. Dowers said yes, if they can work it out for Elberfeld to address it at the August meeting that would be great. He said if it turns out to be a problem he can wait until September.

The President called for a motion on a waiver of the Rules of Procedure.

Mike Moesner made a motion to waive the Rules of Procedure and forward this to the Town of Elberfeld for their August 19, 2013, meeting. The motion was seconded by Jeff Willis. Roll call was taken with Guy Gentry, Mike Moesner, Richard Reid and Jeff Willis voting for the motion. Brad Overton voted against the motion and Jeff Valiant abstained.

Guy Gentry stated this will go to the Town of Elberfeld at their August 19, 2013 meeting at 6:00 p.m. at the Town Hall.

OTHER BUSINESS:

Proposed ordinance changes:

Subdivision Control Ordinance: Sewer requirements

Mrs. Rector said they had a subdivision that was submitted for recording and they received a letter from Newburgh Sewer stating they were given sufficient security for the installation of the sewer lines however, they were not substantially completed, therefore they would not issue sewer taps. She said when they give a letter saying they have approved the sewers and have taken the surety and they record the plat it is supposed to mean it is a buildable lot and someone can come in the next day and get a permit on that subdivision. She said she spoke to Susan at Newburgh Sewer who said this is the case in this subdivision. Mrs. Rector said back in 2005 this same thing occurred and the Board came up with sticker to place on the plat that basically held Warrick County harmless of recording a plat and then someone not being able to get a permit. She said that put people on notice that they weren't meeting Newburgh Sewer Department's regulations at that time and no permits would be issued. She said now they are starting this again. Mrs. Rector said Jordan Aigner had one subdivision in Victoria that started this ball

rolling again. She said Morrie, Guy and herself met with Jordan to go over what they could possibly do. She said Mr. Aigner is present this evening to speak on that from the developer's standpoint on presold lots and extending sewer lines. Mrs. Rector said she has also received letters and recommendations from Chris Wischer, an attorney who works at the law firm representing Newburgh Sewer. She said Mr. Wischer came up with some verbiage and they have tweaked it some and it was agreed she would type up an ordinance to show the Board. Mrs. Rector explained what is proposed to be added saying "The plat and the applicable deed shall display the following notations: The utility will not sell sewer/water taps for any lot in this subdivision until the sewer/water lines servicing the subdivision are installed and deemed substantially complete by said utility, Warrick County will not issue Improvement Location Permits or Building Permits for any lot in this subdivision until a sewer/water tap for the lot is issued by said utility." She said this will be placed on the plat by the engineer/surveyor submitting the plat. She said this will be placed on the deed when they sell the lot and it will be on the plat. She said that way they can get the plat recorded but they are put on notice they won't get any permits from the County until the utility company is satisfied the lines are in place.

Jordan Aigner said luckily, with the plat in Victoria that Mrs. Rector spoke about, it was a small enough sewer and they were able to get the work done, substantially complete and approved within the last four days. He said so the plat that got this ball rolling was actually recorded Friday. He said he is here now as a developer for the next project he may do. He said just to break it down in simple terms, the way the current ordinance is, it would not allow a developer to come up and have the plat done, the letters of credit and everything good to go and begin the process – they are moving dirt, putting streets in and maybe putting some pipe in the ground but the bills are racking up. He said he has three or four builders who want to buy a lot to get their clients ready to go but they can't buy a lot because he can't record the plat. He said what they are really trying to do is for lack of a better situation he would say this would ensure them to be able to have pre-sold lots to be able to help pay for the up front development cost. He said this way they could sell lots and it would be on the plat and on the deed that they won't get a building permit until they get this done. He said as a developer this is a good thing for them because they can start paying for their investment much sooner. He said if it is a larger subdivision, substantial completion for some utilities is harder to get than others and they could be talking about \$200,000 before they could sell any lots. He said for a developer this is a very important thing.

Guy Gentry asked if he could see the language working for most subdivisions.

Jordan Aigner said he has not re-visited the language but if it is the same then it is fine.

Guy Gentry said still in a large development they may want to do it in phases. He said he would think what would be substantial in a small subdivision would be different than that in a larger one. He said they would have to do a lot more work of course but they could still sell the lots.

Jordan Aigner said that is what he is saying. He then said maybe they should re-visit the language.

Mrs. Rector said it is in the Article for Submission of Plats, Proof of Financial Responsibility, Major Subdivisions and so it is where you are recording a plat. She said they could have a 200 lot primary plat approved and record only 50 lots at a time or they could do all 200 lots at once.

Jordan Aigner agreed and said but they won't issue any permits if it isn't substantially complete.

Mrs. Rector said that is correct and what Guy is saying they would want to do the subdivision in sections.

Guy Gentry said because they are going to want to start building probably before they get everything done for the entire thing.

Jordan Aigner said that is true.

Mrs. Rector said they would have to understand that they wouldn't want to record too much at one time.

Richard Reid asked what happens when they are outside the four mile limit from a sewer company; are they going to have two different lift stations.

Jordan Aigner said in this specific site, no, but there are a few properties they are looking at that they may have to have that.

Richard Reid said that is going to be terrible.

Jordan Aigner said that is a whole other hurdle they will have to jump over and to give everyone a little background; there is a dispute between Newburgh and Chandler sewer and right now they are going to have to go to each utility and ask them to release a certain service area so they don't have to have two utilities on the same piece of property going two different ways.

Mrs. Rector asked if that is anywhere or just in that one area they overlap.

Richard Reid said there is an area where you can decide which utility. He said it is going to be a nightmare.

Jordan Aigner said it is a nightmare and right now on the rest of the property of Victoria he is going to request from Chandler and Boonville that they allow him to go to Newburgh because they have manhole already on the property. He said he has to ask them because he doesn't want to get dragged into a lawsuit.

Richard Reid asked if he has talked to them yet because he isn't sure how Chandler will react.

Jordan Aigner said he hasn't spoken to them yet but he expects they won't react real well. He said the only thing on his property is Chandler doesn't have any facility anywhere close.

Guy Gentry said he asked Attorney Doll and was answered what is substantial completion (per who's definition) but he doesn't see it.

Mrs. Rector said it was in their contract.

Jordan Aigner said the term they used was the "sewer could be connected for its intended use". He said when they came to check his subdivision they kept saying as long as he can connect to the sewer for its intended use. He said obviously if you have things going downhill and he wants a tap in between and he doesn't have the downhill pipe in then it won't work; but if he has a connection to a downstream manhole and you are going upstream and you have an upstream manhole then there is a pretty good chance that anything in between them is substantially complete and you can tap in.

Mrs. Rector said but it hasn't been accepted by the utility.

Jordan Aigner said the acceptance process is much longer for them. He said they have to go through a punch list process and a lot of time you have to seed and straw. He said at times you may have an eight foot hole and want to mound it up so it can settle down and then you have to seed and straw and that is at least a twenty day process before they will even say it is acceptable. He said what he is asking here is that it not be substantial completion. He said they are saying they won't be substantially complete and this takes it out of the Plan Commission's hands because it is put on the plat and put on the deed and it is between the developer who is selling the lot to the person who wants to get the building permit going. He said it is disclosed on the plat and the deed.

Mrs. Rector asked how they will know this disclosure is put on the deed.

Attorney Doll said it is a violation of the ordinance if he doesn't do it. He said it says they shall display this so it is a violation of the ordinance and subject to a fine of \$300 a day.

Mrs. Rector said she just wants to be clear.

Jeff Willis said his major concern is if the developer goes bankrupt will they have any recourse.

Jordan Aigner said the utility has the Letter of Credit. He said they won't let him get this far unless he gives them a Letter of Credit. He said with the utility he has two options; complete it all 100% (which takes a long time) or post a Letter of Credit and do this process. He said this is a vehicle to let him move on with the process.

Mrs. Rector said when the County takes a Letter of Credit for streets, sidewalks and drainage they don't have to have the roads built or drainage in before they issue permits because if they don't build them the County will take the money and build them. She said she always assumed the utility did the same thing and they sent a letter saying they were given a Letter of Credit and now they find out that they accept the Letter of Credit but they still won't give taps and have to

have it substantially complete. She said they are accepting the Letters of Credit but they are not taking on the responsibility of putting any line in.

Guy Gentry said their contract reads they won't put in any line.

Mrs. Rector said she can't understand why they are even accepting Letters of Credit but that is why they are having this discussion.

Jordan Aigner asked if they have any questions as to why the developers want to do this. He said this will help move things along and help with costs.

Brad Overton asked if the developer goes under...how does the Letter of Credit work.

Mrs. Rector said until they get to the point that Newburgh Sewer will issue them a sewer permit, it will strictly be between the developer and the purchaser of the lot. She said once it is substantially completed they will still have to give surety to the utility until the lines are accepted.

Jordan Aigner said and before they can even come in to the Plan Commission to get a permit they will have to have their sewer permit first and so they will be put on notice of why they can or can't get a sewer permit.

Mrs. Rector said she thinks what Mr. Overton is asking is what if they record this plat and this statement is on the plat and they sell several lots and then never puts in any of the improvements.

Attorney Doll said that still is between the developer and the purchaser because no one will be building on those lots. He said if they read this proposed ordinance they can't get a building permit until a sewer/water line is substantially complete. He said if they buy a lot nothing else is going to happen until the sewer and water lines are put in and the utility deems them substantially complete. He said then the owner can come in and get a building permit so it is not like they can end up with a \$200,000 house sitting on a lot with no sewer or water.

Brad Overton said he was just thinking they may end up with a lot they can't build on.

Attorney Doll said that is really the utility's responsibility to answer that. He said he thinks regardless of what their contract says, if they take a Letter of Credit and the builder defaults on the subdivision and there are third parties owning property there he thinks they have a heck of a lawsuit against the utility to compel them to put the lines in. He said that is not his client but this fixes the Plan Commission problem and it lets the developer record their plat and if they want to pre-sell lots go do it. He said they aren't going to issue any permits to anyone without their water and sewer permits.

Jordan Aigner said keep in mind it is also going to be on the deed just like an easement would be noted.

Attorney Doll said that is a consumer protection point. He said a lot of people don't read the plat; they won't go to the office and look at the plat before they buy a lot. He said by putting it on the deed it will probably show up in the title insurance. He said they will see it in the title insurance and the deed and the only question he has, and it isn't his fight, is whether a bank will give them a loan on a lot with this restriction.

Jordan Aigner said it might be an exception but there again it is his problem not this Board's.

Attorney Doll said they are giving them a tool to try to use.

Jordan Aigner said there may be banks that won't give a loan but there could be home builders who say they don't care and will pay cash.

Mrs. Rector said what she is asking for tonight is a recommendation to advertise this ordinance. She said it has not been advertised and they are not voting on it tonight.

Discussion ensued that it would be at least two months before this could go into effect.

Jeff Valiant made a motion to have the Executive Director advertise the ordinance for public hearing. The motion was seconded by Jeff Willis and unanimously carried.

Jordan Aigner asked when it would come back before them because he would like to attend the meeting.

The meeting dates were discussed with it being said the next meeting is September 9th.

Request for waiver of Subdivision Control Ordinance: K & E Multifamily LLC, Max Kendall, Manager. Castle Commons PUD – Requesting PUD to be recorded without having the ability (at the time of recording) to purchase a sanitary sewer tap from the Town of Newburgh for buildings 6-9.

Krista Lockyear and J.R. Kendall were present.

Mrs. Rector said they all have copies of the proposed PUD. She said this is a case where there are some Newburgh Sewer lines in place and there are some that are not for some of the buildings.

Attorney Doll asked why.

Mrs. Rector said this property has been sitting for years and there has been no development and they put the lines in front for the bank.

Attorney Doll said previously this was a platted subdivision with lots and so the sewers and water lines were put in but the lots don't match up with the new PUD so half has water and sewer and half doesn't.

Mrs. Rector said they want to record the entire plat and show all of the buildings because they need to show it all in order to meet their parking requirements. She said they want to build the front buildings and clubhouse right now where the lines are and so basically the note they just discussed would say certain buildings could or could not get a permit. She said they have to get a letter from Newburgh Sewer to know specifically which buildings will be allowed sewer taps and then allow them to record the plat and get started. She explained Indiana Code has changed to allow the Plan Commission to grant waivers of the Subdivision Control Ordinance so until the ordinance they just talked about goes through they need a waiver approved.

Attorney Doll said if they are so inclined.

Discussion ensued over where the lines were and which buildings could be built.

Jeff Willis said they won't issue permits for the buildings without their sewer and water permits anyway. He said so this is just so they can get it recorded and get the process started.

Discussion ensued they are not going to sell any lots in this subdivision.

Attorney Krista Lockyear said they are not selling the lots so there is nobody in danger of being duped here. She said they just need to get moving and pull permits for the front buildings which does have sewer substantially completed. She said this is a PUD and if it had been approved by them as two separate subdivision plats or PUDs they could just record the first phase and move on but because it is the whole parcel and they need the parking in the back to meet all the other requirements they need to record the entire plat to even pull permits on the buildings that have sewer available.

Mrs. Rector said basically they will get a letter from Newburgh Sewer that is going to say it is substantially completed for Buildings 1,2,3,4 and 5 and the clubhouse but not for Buildings 6-9 and no sewer taps will be issued for those buildings. She said basically they are asking to record the plat without being able to get permits for the back half.

Guy Gentry commented that if the ordinance is passed this would be in compliance with that ordinance and they are asking for a waiver from what is currently in place.

Jeff Willis asked if the primary plat had a letter from Newburgh Sewer saying they had the capacity to which Mrs. Rector said they had to have that or the primary couldn't have been approved.

Krista Lockyear said they also have the contract in place with Newburgh and the Letter of Credit in place as well. She said this is just a chicken and egg thing right now with construction timing.

Ascertaining there were no remonstrators present, the President called for a motion.

Morrie Doll asked if everyone is aware of what the motion is for; there is a request for a waiver to allow the plat to be recorded prior to the installation of the sewer and water lines on the whole

plat, with the understanding that permits will not be issued except for those structures where such water lines and sewer lines are in existence.

Mrs. Rector questioned if there should be a notation placed on the plat.

Discussion ensued they are not selling lots and no notation is needed.

Jeff Willis asked if they should have on there anyway in case they sell the complex midway through the process.

Guy Gentry said that wouldn't be a bad idea.

Krista Lockyear said that wouldn't be too difficult to accomplish and they would be willing to do so.

Mike Moesner made a motion to approve the waiver of the Subdivision Control Ordinance in regard to allowing this plat to be recorded with the stipulations they have discussed. The motion was seconded by Rick Reid and unanimously carried.

Krista Lockyear said she would email Mrs. Rector the language they will put on the plat.

Guy Gentry asked them to speak with the County Engineer about a left turn on Oak Grove Road.

Comprehensive Zoning Ordinance: Temporary Banners

Mrs. Rector said in their packets they will see a photo of the Heart Hospital at Gateway. She said they got a special award and they want to put a 16'x 92' mesh banner up on the building until February of next year. She said it doesn't fit anywhere in the ordinance because they want it up too long and it is too big for a temporary sign permit but it isn't going to be a permanent sign. She said after discussing this issue with Attorney Doll and Guy she went ahead and issued them a permit and made it expire that date. She said she also didn't include the square footage of the sign in the maximum allowed square footage. She said Attorney Doll suggested they amend the temporary sign permit ordinance by taking out the 64 square footage requirements.

Attorney Doll said that is correct and it also has time limit.

Discussion ensued over the time limits for different signs and the different categories.

Attorney Doll said it seems to him they should come to some decision as to how big a temporary sign can be and how long they can be there.

Mike Moesner said he can see the purpose of having limitations but also in a situation like that where you have a huge building and the sign isn't going to obstruct anyone's view and it is just celebrating something they have accomplished, he doesn't see it being a detriment to the community.

Guy Gentry said that is why they went ahead and gave them a permit.

Mrs. Rector said she doesn't know why the banners on buildings are made to get a permit period. She said look how many churches put up big signs at Easter, etc. and they don't get permits for them. She said doesn't think the Building Inspector is going to inspect that banner on the building. She said she needs their thoughts on how to change this ordinance. She said people are constantly putting up banners on their businesses all of the time and they don't come in for a permit.

Jeff Willis asked why they even care about the banners.

Mrs. Rector said they can have exemptions; there are exemptions already.

Guy Gentry said they could add that banners attached to buildings are exempt from permits.

Discussion ensued over the exempted signs.

Morrie Doll said they could make a determination that most of the banners they come across fall under the exemption status.

Brad Overton asked if there is a definition of a banner.

Mrs. Rector read the definition of a sign. She said even letters on a window is a sign.

Mike Moesner said he doesn't see why they can't determine that banners are information type signs and are under the exemptions.

Mrs. Rector said any banner is informational.

Further discussion ensued over the exempt signs.

Attorney Doll said Mr. Moesner may be right but do they want to impose a size formula and length of display time limit. He said they have all seen banners draped across things that are so old they look terrible.

Mike Moesner said that would be the only thing he would have a concern about. He said if the banner looks like it is starting to detract from the appearance of the building it needs to come down but he doesn't know how they can say that.

Discussion ensued over left over signage.

Mrs. Rector said normally these type of signs are not up for over six months. She said she just brought this to the Board for their attention and see if they needed to change anything.

Jeff Willis said if they change the ordinance then it has to also go to the Commissioners.

Mrs. Rector said unless they make a determination that it fits in the ordinance.

Attorney Doll recommended they think about this for a month or so.

Rick Reid made a motion to table this. The motion was seconded by Brad Overton and unanimously carried.

Mrs. Rector said she will get a definition of a banner.

Attorney Doll said they can also look at other cities and see what they do with banners.

Mike Moesner said they need a time limit so they don't become ratty.

ATTORNEY BUSINESS:

Attorney Doll said there is a question that if someone files for a Variance are they permitted to consider the private restrictions of the subdivision where the Variance has been requested. He said they had this issue come up and it has been his advice (for any permit) that they are precluded by appellate court decision from considering private restrictive covenants when we look at any permit application. He said they have talked about this before and he looked to see if there are any changes in the court of appeals decision since he last looked and there hasn't been. He called their attention to a court case that the court of appeals said no one that is not a part of a contract or who isn't specifically named in the contract as a third party beneficiary can ever deal with or enforce or consider or handle issues concerning restrictive covenants. He said unless a developer says in his plat the covenants can be enforced the developer, buyers or Warrick County Government they are not allowed to in any way to wade into the abyss of restrictive covenants and they don't want to. He either way they go they will be wrong to somebody. He said a lot of restrictive covenants are not very specific and are a matter of taste and décor. He said they can't really get into this and that goodness the courts have said so. Attorney Doll said he isn't sure how they would ever have the latest facts of the case because covenants are modified by homeowners associations and are supposed to be recorded. He said they could go to the Recorder's Office to look up covenants and maybe the latest version has not been recorded and so for all those reasons it is his recommendation they not consider restrictive covenants when they deal with applications. He said they just had this issue last month and the homeowners have a private remedy with the courts and their homeowners associations. He said they know what they deal with in complaints about trash and junk; imagine what it would be like if they were to try to enforce restrictive covenants. He said they would need a legal department of two or three more lawyers and a lot more staff.

Discussion ensued over the time limits of restrictions.

Mrs. Rector said the reason she asked Attorney Doll to look into this is because Mr. Price (from the last meeting) has been sending out emails to a lot of elective officials trying to get the County

to enforce their private restrictions and so she asked Attorney Doll to respond officially. She said it would be impossible for the County to enforce private restrictions.

Discussion ensued over the building and violation that was before the Board last month and ways to move the building.

Attorney Doll said the Adams case has been settled and the order is in front of the Judge to accept it.

Mrs. Rector reminded him he needs to file the Rainey bills and they have a hearing for Quick on September 13th.

EXECUTIVE DIRECTOR BUSINESS:

Budget Report – Mrs. Rector said she spoke with Guy Gentry before she turned it in. She explained she didn't ask for anything increases but she did ask for a 3% raise even though she knows they won't get it, it just made her feel better to ask for one. She said the office operates on \$7700 a year, not counting salaries. She said there isn't anything she can cut from the budget.

Mike Moesner made a motion to accept the budget as presented. The motion was seconded by Jeff Valiant. Brad Overton voted against the motion because there were no reductions in it. All other Board members voted for the motion; therefore it carried.

Being no other business the meeting adjourned at 7:15 p.m.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director